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ALEXANDER L. STEVAS,
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82-607
No.

IN THE

Supreme Court of the United States

October Term, 1982

RICHARD STEPHEN DUNN,
Petitioner

v.

NATIONAL RAILROAD PASSENGER CORPORATION,
a/k/a AMTRAK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Does a federal court have the power to enjoin a state court proceeding, pursuant to the relitigation exception of the Anti-Injunction Act, when a state court has already decided, in the case before it, that the validity of a release is a jury issue and that plaintiff is not relitigating an F. E. L. A. claim settled by the parties in a prior federal court proceeding?

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OPINIONS BELOW

No opinion was filed by the United States District Court for the Eastern District of Pennsylvania. A copy of the Order of November 25, 1981 appears at Appendix A1.

No opinion was filed by the United States Court of Appeals for the Third Circuit. A copy of its Order of June 17, 1982 appears at Appendix A2, and a copy of the Order of July 12, 1982 denying the Petition for Rehearing en Banc appears at Appendix A4.

These Orders have not been reported.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The Judgment Order of the United States Court of Appeals for the Third Circuit was entered on June 17, 1982 (Appendix A2), and the Petition for Rehearing was denied by Order entered July 12, 1982 (Appendix A4).

The jurisdiction of the Supreme Court is invoked under 28 U. S. C. § 1254(1) (1966).

The basis for federal jurisdiction of the original case in the United States District Court for the Eastern District of Pennsylvania was the Federal Employers' Liability Act, 45 U. S. C. § 51 *et seq.* (1908).

The basis for the litigation presently pending is the Federal Anti-Injunction Act, 28 U. S. C. § 2283 (1948).

STATUTE INVOLVED

This case involves the application of the Federal Anti-Injunction Act, 28 U. S. C. § 2283 (1948) which reads as follows:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

Plaintiff complains that the Federal Court has improperly denied him his right to a jury trial in a state court, in violation of his rights to due process and equal protection under the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.

As relief, plaintiff seeks to be relieved of the injunction barring him from proceeding with his suit in the Pennsylvania state court; the Pennsylvania state court having already decided that a jury issue was raised by the pleadings (A5).

STATEMENT OF FACTS

I. The Injunction

The original case brought in the United States District Court for the Eastern District of Pennsylvania was under the Federal Employer's Liability Act, and was settled during trial. At the time of the settlement a record was made that an additional sum of money had been offered by the railroad to the plaintiff for a resignation.

The plaintiff refused this additional offer because the railroad had stated that he could return to work if he so desired. When plaintiff applied to return to work he was rejected by the railroad, and plaintiff brought suit in the state court. The railroad filed an Answer to the Complaint setting up the Release as New Matter, and plaintiff filed a Reply alleging fraud, accident, or mutual mistake.

The railroad filed a Motion in the state court for Summary Judgment on the same ground which it later used to obtain the injunction in the federal court. The Motion for Summary Judgment was denied by the state court (A5). Thereupon, the railroad returned to the trial judge in the United States District Court for the Eastern District of Pennsylvania, and requested an injunction prohibiting the plaintiff from proceeding with his state court action. This injunction was granted without an opinion.

The Court of Appeals for the Third Circuit affirmed the lower court, without argument, and without an opinion, and subsequently it refused a Rehearing.

II. Status of the Case in the State Court

The status of this case in the state court is that the case there is at issue and on the trial list. When it shall be called to trial, the plaintiff will not be able to proceed

to trial without putting himself in jeopardy of contempt of the Order by the federal court, because of the injunction which has been issued by the United States District Court, and sustained by the Court of Appeals for the Third Circuit.

III. Plaintiff's Complaint

It is the contention of the plaintiff that the United States District Court for the Eastern District of Pennsylvania, and the Court of Appeals for the Third Circuit, violated the Anti-Injunction Act in granting an injunction to the railroad prohibiting the plaintiff from proceeding with his case in the state court, when the state court had already decided that a jury issue was raised by the pleadings.

Under these circumstances, the plaintiff, although he has a valid action pending in the state court, which has decided that a jury issue is raised by the pleadings (A-5), is in jeopardy of being held in contempt by the United States District Court for the Eastern District of Pennsylvania, which prohibited him from proceeding with his cause of action in the state court.

The issue of the validity of the release was raised in the state court, which decided that the validity of the release was a question for the jury (A5). This is an entirely different issue than the one litigated in the federal court, which was basically a negligence case being tried under the Federal Employers' Liability Act. Although the state court has decided that plaintiff has a valid cause of action, it may be dismissed because of the injunction by the Federal Court prohibiting plaintiff from proceeding with his case.

REASONS FOR GRANTING ISSUANCE OF THE WRIT

This Court should grant a Writ of Certiorari because an issue of great importance to the relationship between the federal court and the state court of Pennsylvania is involved. The decision by the United States District Court for the Eastern District of Pennsylvania, and by the Court of Appeals for the Third Circuit, is in conflict with the decisions of this Honorable Court on the same subject, and, in fact, are in conflict with other decisions of the Third Circuit.

a. The Decisions of the Court of Appeals Are Inconsistent With the Decisions of This Honorable Court and Its Own Precedent

The decision of the United States District Court for the Eastern District of Pennsylvania, and of the Court of Appeals for the Third Circuit, are in direct conflict with the Anti-Injunction Act, 28 U. S. C. § 2283 (1948), and the decisions of this Honorable Court and the decisions of other courts of appeals on the same matter. *Atlantic Coastline Railroad v. Brotherhood of Locomotive Engineers*, 398 U. S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970); *Amalgamated Clothing Workers v. Richman*, 348 U. S. 452, 75 S. Ct. 452 (1955); *Lamb v. Kiroff*, 549 F. 2d 1052 (6th Cir. 1977); *Re Glenn Turner*, 521 F. 2d 775 (3rd Cir. 1975).

On its face, the Anti-Injunction Act is an absolute prohibition against the federal court enjoining a proceeding before a state court, unless the case falls within one of three specifically defined exceptions. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Engineers*, 398 U. S. 281, 286; 90 S. Ct. 1739, 1743, 26 L. Ed. 2d 234 (1970).

The United States District Court enjoined the plaintiff from proceeding with the state court suit, without any opinion, but it may be concluded from the record of the argument before the court that the judge decided that the reporting of the case as settled, and the filing of the stipulation to dismiss, was tantamount to a judgment, which required protection from proceeding before a state court.

b. There Was No Judgment

It is the position of the plaintiff that no judgment, within the meaning of the Anti-Injunction Act, had ever been entered. The real issue is whether the cause of action in the state court is the same as that in the federal court. The two causes of action are, in fact, not the same because the case before the federal court involved only the liability of the railroad for an alleged negligent injury to the plaintiff, while the case before the state court raised the question as to the validity of the release. The state court has already decided that a jury issue was raised as to the validity of the release.

The order of dismissal entered by the federal court is not tantamount to a judgment of the court to bring it within the relitigation exception of the Act. In defining the word "judgments" in § 2283, some guidance may be found in the Federal Rules of Civil Procedure. Rule 54(a) states that: "judgment as used in these rules includes a decree and any order from which an appeal lies". By this standard it is apparent that no judgment was entered by the court below.

c. The Injunction Is Contrary to the Decisions

The Third Circuit had previously held in *Re Glenn Turner*, 521 F. 2d 775, 779 (3rd Cir. 1975):

The 'Act is an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of the three specifically defined exceptions. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Eng'rs,* 398 U. S. 281, 286, 90 S. Ct. 1739, 1743, 26 L. Ed. 2d 234 (1970). It applies to injunctions, as in the instant case, directed not at the state court or its officers but at the parties to the litigation. *Id.* at 287, 90 S. Ct. 1739; *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.,* 309 U. S. 4, 9, 60 S. Ct. 215, 84 L. Ed. 447 (1940). It also applies to injunctions, as here, prohibiting judicial executions to enforce collection of a state court judgment. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Eng'rs, supra,* 398 U. S. at 287, 90 S. Ct. 1739; *Hill v. Martin,* 296 U. S. 393, 403, 56 S. Ct. 278, 80 L. Ed. 293 (1935). Such proceedings are considered supplementary to the main proceeding even when they occur in another court. *Hill v. Martin, supra,* 296 U. S. at 403, 56 S. Ct. 278. Thus, section 2283 bars the instant injunction unless it lies within one of the three specified exceptions which 'should not be enlarged by loose statutory construction'. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Eng'rs, supra,* 398 U. S. at 287, 90 S. Ct. at 1743.

Our analysis will be facilitated by discussing the exceptions in reverse order. We safely may ignore the exception authorizing injunctions 'to protect or effectuate [the court's] judgments' since the district court had entered none. See *Jos. L. Muscarelle, Inc. v. Central Iron Mfg. Co.,* 328 F. 2d 791, 793 (3rd Cir. 1964).

This Honorable Court held in the case of *Amalgamated Clothing Workers v. Richman Bros.*, 348 U. S. 452, 454, 75 S. Ct. 452 (1955):

> This [§ 2283] is not a statute conveying a broad general policy for appropriate *ad hoc* application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions. *Id.* at 455 (brackets supplied).
>
> • • •
>
> The assumption upon which the argument proceeds is that federal rights will not be adequately protected in the state courts, and the "gap" complained of is impatience with the appellate process if state courts go wrong. But during more than half of our history Congress, in establishing the jurisdiction of the lower federal courts, in the main relied on the adequacy of the state judicial systems to enforce federal rights, subject to review by this Court. *Id.* 456.

CONCLUSION

Plaintiff respectfully petitions this Honorable Court to grant a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

JOSEPH SMUKLER
Attorney for Petitioner

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Tel: 215-564-1040

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 79-2282

RICHARD STEPHEN DUNN

v.

NATIONAL RAILROAD PASSENGER CORP.
a/k/a AMTRAK

ORDER

(FILED Nov 25 1981)

AND Now, this 25th day of November, 1981, upon motion of defendant the plaintiff is hereby permanently enjoined from proceeding in the action entitled Richard Stephen Dunn v. National Railroad Passenger Corporation, a/k/a Amtrak filed in the Court of Common Pleas of Philadelphia County, Pennsylvania as of July Term, 1981 No. 2280.

By THE COURT:

ALFRED L. LUONGO, *J.*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-3127

RICHARD STEPHEN DUNN,
Appellant

v.

NATIONAL RAILROAD PASSENGER CORPORATION, a/k/a AMTRAK

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
C. A. No. 79-2282

Submitted Under Third Circuit Rule 12(6)
June 7, 1982

Before: ADAMS and WEIS, *Circuit Judges*, and BLOCH, *District Judge*.*

JUDGMENT ORDER

After considering all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By THE COURT,

/s/ ARLIN M. ADAMS
Circuit Judge

ATTEST:
/s/ SALLY MRVOS
Sally Mrvos, *Clerk*

DATED: JUN 17 1982

---

* Hon. Alan N. Bloch, United States District Court for the Western District of Pennsylvania, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-3127

RICHARD STEPHEN DUNN,
Appellant

v.

NATIONAL RAILROAD PASSENGER CORPORATION, a/k/a AMTRAK

SUR PETITION FOR REHEARING EN BANC

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, HIGGINBOTHAM, SLOVITER and BECKER, *Circuit Judges*, and BLOCH, *District Judge.**

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By THE COURT,

/s/ ARLIN M. ADAMS
Circuit Judge

Dated: July 12, 1982

* Honorable Alan N. Bloch, United States District Court for the Western District of Pennsylvania, sitting by designation.

COURT OF COMMON PLEAS

JULY TERM, 1981
No. 2280

RICHARD STEPHEN DUNN

v.

NATIONAL RAILROAD PASSENGER CORP., a/k/a AMTRAK

ORDER

AND Now, this 28th day of October, 1981, upon consideration of defendant's motion for summary judgment and plaintiff's answer thereto, it is hereby ORDERED AND DECREED that the motion for summary judgment is denied.

The denial of the instant motion for summary judgment is without prejudice to defendant's filing a similar motion setting forth *of record* facts showing that the issue of alleged mistake and/or fraud in the settlement of the case in federal court was presented to and ruled upon by the federal court.

By THE COURT:

/s/ BIUNNO, *J.*

82-607

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CLERK

No. ——

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

RICHARD STEPHEN DUNN,
Petitioner

v.

NATIONAL RAILROAD PASSENGER CORPORATION,
a/k/a AMTRAK,
Respondent

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Richard L. Goerwitz, Jr.*
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**Counsel of Record*

THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 238-2000 ● 55

COUNTERSTATEMENT OF QUESTION PRESENTED

Does a federal court have the power to enjoin a party from relitigating in a state court the exact claim which had previously been tried, settled and dismissed with prejudice by a federal court?

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Lawler v. National Screen Service Corp., 349 U.S. 322, 327 (1955)	3

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Federal Rule of Civil Procedure:

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COUNTERSTATEMENT OF THE CASE

Plaintiff instituted an action in the United States District Court for the Eastern District of Pennsylvania pursuant to the provisions of the Federal Employer's Liability act to recover damages for injuries arising out of an accident at work. That action was tried, settled and dismissed with prejudice. Plaintiff then began a second identical cause of action in the Pennsylvania State Courts. The United States District Court for the Eastern District of Pennsylvania enjoined plaintiff from proceeding further with the relitigation of this claim. This action was affirmed by the United States Court of Appeals for the Third Circuit and plaintiff's Petition for Reargument before the Court en Banc was denied.

COUNTERSTATEMENT OF THE FACTS

The statement in appellant's petition that "the plaintiff refused this additional offer because the Railroad had stated that he could return to work if he so desired" is untrue and is unsupported by the record.

In any event, if true, these facts might give rise to a motion pursuant to Federal Rule of Civil Procedure 60(b), which was never attempted by counsel or a proceeding under the Collective Bargaining Agreement which was never attempted on plaintiff's behalf. Plaintiff did, however, bring an action on these facts. Summary judgment was granted to the defendant upon that claim by Newcomer, J., Richard Stephen Dunn v. National Railroad Passenger Corporation, a/k/a Amtrak, U.S.D.C., E.D. of Pa., CA No. 81-2088.

The facts set forth by petitioner might indicate that there were two different issues i.e. in the United States District Court the subject being an action for damages pursuant to the Federal Employer's Liability act and in the state court an action for refusal to re-employ the petitioner. An examination of the Complaint filed in the state court and an examination of the Complaint filed in the federal court will show that they are identical and both state a claim for damages under the Federal Employer's Liability Act. Neither Complaint makes a reference whatsoever to the failure to re-employ the petitioner. It is the basic action pursuant to the Federal Employer's Liability act which the petitioner now attempts to relitigate in the state courts.

Should the plaintiff overcome the preliminary issues in the state court action of the release and res adjudicata the plaintiff would only succeed in then being entitled to relitigate the exact same Federal Employer's Liability Action which was settled and dismissed with prejudice by stipulation of counsel.

REASONS FOR DENYING THE WRIT

The Anti-Injunction of 28 U.S.C. Section 2283 has been held in many cases to authorize the Courts of the United States to restrain state court proceeding relitigating issues already decided in federal litigation.

Mitchum v. Foster, 92 S.Ct. 2151, 407 U.S. 255, 32 L.Ed. 2d 705 (Fla. 1972). The contrary decisions following *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100 (1941) were decided prior to the amendment of Section 2283 on June 25, 1948.

The instant action was dismissed with prejudice (A 8-9) and the Common Pleas action is an exact duplication of that cause of action as may be seen by a comparison of the Complaints (A 1-7). Dismissal with prejudice constitutes an adjudication of the merits as fully and completely as if the Order had been entered after trail. *Gambocz v. Yelencsics*, 468 F.2d 837 (C.A. 3d, 1972); *Lawler v. National Screen Service Corp.*, 349 U.S. 322, 327 (1955). Therefore, the doctrine of *res adjudicata* bars relitagation of plaintiff's claims that were dismissed in the prior suit against defendent Amtrak.

The argument of petitioner and the cases cited therein are premised upon the assumption that there was no judgment entered by the United States District Court for the Eastern District of Pennsylvania in the first action which could then be interfered with by prosecution of a second identical cause of action in the state court. This is an inappropriate premise as a dismissal with prejudice by stipulation of counsel pursuant to the provisions of Federal Rule of Civil Procedure 41(a)(1)(ii) is equivalent to a dismissal on the merits following trial. *Gambocz v. Yelencsics, supra*, and *Lawler v. National Screen Service Corp., supra*.

The cases cited by petitioner do not deal with an attempt to relitigate in the state court and cause of action previously dismissed on the merits by a federal court.

It is just this type of vexatious relitigation which the federal courts are empowered to enjoin and should enjoin ". . . to protect or effectuate its judgments."

Respondent respectfully requests This Honorable Court to deny the Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

SWARTZ, CAMPBELL & DETWEILER

By _____
Richard L. Goerwitz, Jr.
Attorney for Appellee

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD STEPHEN DUNN	:	CIVIL ACTION
v.	:	No. 79-2282
NATIONAL RAILROAD PASSENGER	:	JURY TRIAL
CORPORATION, a/k/a AMTRAK	:	DEMANDED

COMPLAINT

1. Plaintiff's action arises under the Act of Congress of April 22, 1908, 35 Stat. 63, Chapter 149 and amendment thereto, commonly known as the Federal Employers' Liability Act, 45 U.S.C. Sections 51 et seq., as hereinafter more fully appears.

2. The defendant is a railroad corporation organized and existing under and by virtue of the laws of the District of Columbia, and was at the time of the injury hereinafter alleged, and is now doing business within the jurisdiction of this Court as an interstate common carrier of passengers and freight for hire into and from various states of the Union.

3. At the time of the accident and injuries hereinafter alleged, Richard Stephen Dunn was employed by the defendant as a truck driver and was engaged in work in furtherance of interstate commerce.

4. On or about March 23, 1979, plaintiff was in the course of his duties required to work at the defendant's Penn Coach Yards at Philadelphia, Pennsylvania, and while so engaged, was injured.

5. The said injuries to the plaintiff were caused by the negligence and carelessness of the defendant, its agents, servants, and employees.

6. As a result of the aforesaid accident, the plaintiff sustained severe and extensive injuries including injury to his back, a herniated disc, phlebitis of the right leg, severe emotional distress, and severe shock to his nervous system; all of which have caused him great mental

anguish and physical pain and inconvenience; he has required hospital, surgical and medical care and treatment; he has been incapacitated; all of which will continue in the future.

WHEREFORE, plaintiff demands judgment against the defendant in the amount of Two Hundred and Fifty Thousand ($250,000.00) Dollars.

MEYER, LASCH,
HANKIN & POUL

By_____
Attorneys for Plaintiff

I certify that the within is a copy of the original complaint filed in this case.

MEYER, LASCH, HANKIN & POUL
By: ALBERT M. HANKIN, ESQUIRE
Attorney for Plaintiff
Identification No.: 03963
12th Floor — One East Penn Square Building
Philadelphia, Pa. 19107
(215) LO 4-1040

RICHARD STEPHEN DUNN 603 Glenfield Avenue Glenolden, PA 19036	:	IN THE COURT OF COMMON PLEAS OF
v.	:	PHILADELPHIA
NATIONAL RAILROAD PASSENGER CORPORATION, a/k/a AMTRAK 1617 Suburban Station Bldg. Philadelphia, PA 19102	: : : :	COUNTY TRIAL DIVISION JULY TERM, 1981 NO. 2280

Notice

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A

LAWYER OR CANNOT AFFORD ONE GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP."

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1339 Chestnut Street
Philadelphia, PA 19107
686-5698

A-5

AVISO

La han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defienda, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandants y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGA."

SERVICIO DE REFERENCIA LEGAL
Widener Building, Segundo Piso
Filadelfia, Pennsylvania 19107
Telefono: 686-5698

MEYER, LASCH, HANKIN & POUL

By _____
Albert M. Hankin
Attorney for Plaintiff

COMPLAINT IN TRESPASS

1. Plaintiff's action arises under the Act of Congress of April 22, 1908, 35 Stat. 63, Chapter 149 and amendments thereto, commonly known as the Federal Employers' Liability Act, 45 U.S.C. Sections 51 et seq., as hereinafter more fully appears.

2. The defendant is a railroad corporation organized and existing under and by virtue of the laws of the District of Columbia, and was at the time of the injury hereinafter alleged, and is now doing business within the jurisdiction of this Court as an interstate common carrier of passengers and freight for hire into and from various States of the Union.

3. At the time of the accident and injuries hereinafter alleged, Richard Stephen Dunn was employed by the defendant as a truck driver and was engaged in work in furtherance of interstate commerce.

4. On or about March 23, 1979, plaintiff was in the course of his duties required to work at the defendant's Penn Coach Yards at Philadelphia, Pennsylvania, and while so engaged was injured.

5. The said injuries to the plaintiff were caused by the negligence and carelessness of the defendant, its agents, servants, and employees.

6. As a result of the aforesaid accident, the plaintiff sustained injuries to his back and spine, including a herniated disc, phlebitis of the right leg, and a severe shock to his nervous system, and inconvenience; have required him to incur expenses for medical and hospital care; and he is unable to enjoy his avocations. He has been advised by the defendant that he is permanently disabled and permanently incapacitated from performing his work. On information supplied by the defendant, plaintiff believes and therefore avers that all of this will continue in the future.

WHEREFORE, plaintiff demands Judgment against the defendant in a sum in excess of $15,000.

MEYER, LASCH, HANKIN & POUL

By: _____
Albert M. Hankin
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF PHILADELPHIA :

RICHARD STEPHEN DUNN, being duly sworn according to law, deposes and says that he is the above-named plaintiff and that the facts contained in the foregoing Complaint are true and correct to the best of his knowledge, information, and belief.

Richard Stephen Dunn

SWORN TO AND SUBSCRIBED :
before me this 16th day :
of July, 1981. :

Notary Public

SAMANTHA NARELLE KIRKLAND
Notary Public, Phila., Phila. Co.
My Commission Expires Dec. 3, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD STEPHEN DUNN	:	
	:	CIVIL ACTION
v.	:	NO. 79-2282
NATIONAL RAILROAD PASSENGER CORP.	:	

ORDER

AND NOW, TO WIT: this 18th day of June 1980, it having been reported that the issues between the parties in the above action have been settled and upon Order of the Court pursuant to the provisions of Rule 23(b) of the Local Rules of Civil Procedure of this Court (effective January 1, 1970), it is

ORDERED that the above action is DISMISSED with prejudice, pursuant to agreement of counsel without costs except as provided by Local Rule 38(d).

MICHAEL E. KUNZ, Clerk

By _____
Deputy Clerk

June 19, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MEYER, LASCH, HANKINS & POUL
By: HERMAN B. POUL
Attorney for Plaintiff
Identification No.: 04165
12th Floor — One East Penn Square Building
Philadelphia, Pa. 19107
(215) LO 4-1040

RICHARD STEPHEN DUNN	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 79-2282
NATIONAL RAILROAD PASSENGER	:	
CORPORATION, a/k/a AMTRAK	:	

STIPULATION TO DISMISS

AND NOW, to wit, this 30th day of June, 1980, it is agreed between MEYER, LASCH, HANKIN & POUL, Esquires, Attorneys for Plaintiff; and RICHARD L. GOERWITZ, JR., Esquire, Attorney for Defendant, that the above entitled action is dismissed with prejudice and without costs.

MEYER, LASCH, HANKIN & POUL

By: _____
Attorneys for Plaintiff

_____
Richard L. Goerwitz, Jr.
Attorney for Defendant

Office - Supreme Court, U.S.
FILED
NOV [redacted]
ALEXANDER L. STEVAS,
CLERK

No. 82-607

IN THE

Supreme Court of the United States

October Term, 1982

RICHARD STEPHEN DUNN,

Petitioner

v.

NATIONAL RAILROAD PASSENGER CORPORATION
a/k/a AMTRAK

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY OF PETITIONER TO BRIEF FOR RESPONDENT

JOSEPH SMUKLER
Attorney for Petitioner

MEYER, LASCH, HANKIN & POUL
1200 One East Penn Square Building
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REPLY OF PETITIONER

The Brief of the Railroad repeats itself in saying that the law suit in the State Court is an "exact duplication" and an attempt to "relitigate the exact same Federal Employers' Liability action which was settled and dismissed" by the Federal Court. Nothing could be further from the truth. In fact, it is the Railroad which seeks to relitigate, in the Federal Court, the precise issue decided by the State Court against the Railroad, without exhausting the appellate process of the State Court system.

The Railroad's argument is intended to mislead because it equates the Complaints (the formal pleadings) filed in the Federal and State Courts with the cause of action (litigation encompassing all claims raised by the pleadings).

While the Petitioner may have commenced the State Court suit by a Complaint similar to the one used originally in the Federal Court, this was merely a procedural mechanism, utilized as the most effective, if not the only, way to test the validity of the release. In fact, the Railroad did file an Answer to the Complaint, pleading the Release. When the plaintiff filed his Reply, the issue was raised (A6 to A12 herein). The Railroad then moved for summary judgment, making the same arguments which it is making in its Brief to this Court, and the State Court held that a jury question was raised (A5, Original Petition for Writ of Certiorari). It was only then that the Railroad applied to the Federal Court for an injunction.

There is no issue of *res judicata*. Whether there was a final judgment in the F. E. L. A. action (it is argued in the Petition for Certiorari that there is not a final judgment) is immaterial. The validity of the release is the issue in the State Court case.

If the position of the Railroad were correct, the question as to whether a release was obtained by fraud or mutual mistake could rarely be raised. The law is to the contrary. *Scanlon v. Pittsburgh*, 319 Pa. 477, 181 A. 565 (1935); *Van Ormer v. Osborn*, 255 Pa. 47, 99 A. 161 (1916).

The case of *Gambocz v. Yelencsics*, 468 F. 2d 837 (3rd Cir., 1972) is not applicable to this case because in the *Gambocz* case the lower court dismissed the Complaint with prejudice. This was a judicial determination, not an attempt to settle a case on a purported agreement between the parties.

The case of *Lawlor v. National Screen Service*, 349 U. S. 322, 75 S. Ct. 865, 99 L. Ed. 1122 (1955), cited by the Railroad, actually supports the position of the Petitioner. This was an antitrust case. Prior to the case before the Court, there had been another case, which was settled. Defendants moved to dismiss the second case on the ground of *res judicata*. The motion was granted by the District Court and affirmed by the Third Circuit. This Court said, in reversing:

> That both suits involved essentially the same course of wrongful conduct is not decisive, such a course of conduct—for example, an abatable nuisance —may frequently give rise to more than a single cause of action. 75 S. Ct. 865, 868.

The following language by the Court is particularly pertinent:

> Acceptance of the respondents' novel contention would in effect confer on them a partial immunity from civil liability for future violations. Such a result is consistent with neither the antitrust laws nor the doctrine of *res judicata*. 75 S. Ct. 865, 869.

Respondent also cites the case of *Mitchum v. Foster*, 92 S. Ct. 2151, 407 U. S. 255, 32 L. Ed. 2d 705 (1972). The conclusion by the Court was:

> Today we decide only that the District Court in this case was in error in holding that, because of the Anti-Injunction statute, it was absolutely without power to enjoin a proceeding pending in a state court under any circumstances whatsoever.

Petitioner has not made, nor does he now make, such an argument. It is conceded that a state court proceeding may be enjoined in a proper case, but this is not such a case, because the issue before the State Court was never before the Federal Court. The State Court has held that the pleading before it raises a jury question as to the validity of a release. This issue was never previously before any court. The Railroad has been creating a false trail by basing all of its arguments on the pleadings rather than the cause of action. The fact is that the railroad by its own Answer to the Complaint brought the question of the validity of the Release before the State Court, as was intended.

Respectfully submitted,

JOSEPH SMUKLER
Attorney for Petitioner

Of Counsel:
MEYER, LASCH, HANKIN & POUL
1200 One East Penn Square Bldg.
Philadelphia, PA 19107
Tel: 215-564-1040

Appendix.

COMMON PLEAS OF PHILA.

JULY TERM, 1981

No. 2280

RICHARD STEPHEN DUNN

v.

NATIONAL RAILROAD PASSENGER CORP.
a/k/a AMTRAK

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

All averments of plaintiff's complaint are at issue pursuant to the Pennsylvania Rules of Civil Procedure without necessity of answer.

NEW MATTER

1. There was no accident of March 23, 1979 nor any injury to plaintiff resulting therefrom.

2. Plaintiff's injuries were caused by pre-existing problems and/or conditions unrelated to his railroad employment.

3. Plaintiff brought an identical cause of action against defendant in the United States District Court for the Eastern District of Pennsylvania. A true and correct copy of plaintiff's complaint is attached hereto as Exhibit A.

4. The action brought in the United States District Court was settled in open Court, a transcript of the terms and conditions of that agreement are attached hereto as Exhibit B.

5. Defendant has complied with all the requirements of the aforementioned transcript.

6. Plaintiff executed a release which is attached hereto as Exhibit C.

7. The action brought in the United States District Court was dismissed with prejudice in accordance with the provisions of Rule 23(b) and is attached hereto as Exhibit D, and a Stipulation to Dismiss, (D-1).

WHEREFORE, the instant action is barred by the execution of the release and is barred by the doctrine of res judicata by the dismissal with prejudice of the prior identical cause of action.

SWARTZ, CAMPBELL & DETWEILER

By

Richard L. Goerwitz, Jr.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS

Benjamin S. Bremer, being duly sworn according to law deposes and says that he is authorized to take this affidavit on behalf of defendant; that the facts set forth in the foregoing answer to plaintiff's complaint and new matter are true and correct to the best of his knowledge, information and belief.

/s/ BENJAMIN S. BREMER
Benjamin S. Bremer

SWORN TO AND SUBSCRIBED
before me this 29th day
of July, 1981.

NOTARY PUBLIC
My Commission Expires: 10/15/81

IN THE
COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

JULY TERM, 1981

No. 2280

RICHARD STEPHEN DUNN

v.

NATIONAL RAILROAD PASSENGER CORPORATION, a/k/a AMTRAK

PLAINTIFF'S REPLY TO NEW MATTER

AND Now, this fourth day of August, 1981, comes Richard Stephen Dunn, the plaintiff above-named, by his attorneys, Meyer, Lasch, Hankin & Poul, Esquires, and in reply to the New Matter contained in the Answer filed by the defendant in the above case, avers as follows:

1. Denied. There was an accident on March 23, 1979 in which the plaintiff sustained injuries, and this suit is brought to recover damages therefor.

2. Denied that plaintiff's injuries were due to pre-existing problems and/or conditions unrelated to his railroad employment. Plaintiff sustained injuries during the course of his employment with the railroad, and plaintiff has brought this suit to recover therefor.

3. Admitted.

4. Admitted that the case in the United States District Court was settled, but the settlement was obtained either by the fraud of the defendant, or as a result of a mutual mistake. This case was settled during the course of the trial because the defendant argued that the plaintiff was able to work. The plaintiff agreed to a settlement of $80,000, rejecting an offer of an additional $10,000 for a resignation because by returning to work as defendant maintained he could, the plaintiff had an earning capacity of approximately $750,000 with this defendant. On October 2, 1980, plaintiff was examined by a physician for the defendant and was approved for work, Exhibit "A". On October 15, 1980, the same medical examiner placed restrictions on plaintiff and the defendant refused to permit the plaintiff to work, Exhibit "B".

5. Denied. The defendant did not comply with the requirements of the transcript or with the terms of the settlement because the defendant has refused to permit the plaintiff to return to work contrary to the terms of the settlement agreement which was obtained either through the fraud of the defendant or as a result of a mutual mistake. The plaintiff rejected an offer of an additional $10,000 for a resignation, relying on the argument of the defendant that he was able to work, because by returning to work as defendant maintained he could, the plaintiff had an earning capacity of approximately $750,000 with this defendant. On October 2, 1980, plaintiff was examined by a physician for the defendant and was approved for work, Exhibit "A". On October 15, 1980, the same medical examiner placed restrictions on plaintiff and the defendant refused to permit the plaintiff to work, Exhibit "B".

6. Admitted that the plaintiff executed the release attached to the defendant's answer. It is denied that this

is a valid release because it was obtained either through the fraud of the defendant or as a result of a mutual mistake. This case was settled during the course of the trial because the defendant argued that the plaintiff was able to work. The plaintiff agreed to a settlement of $80,000, rejecting an offer of an additional $10,000 for a resignation, because by returning to work as defendant maintained he could, the plaintiff had an earning capacity of approximately $750,000 with this defendant. On October 2, 1980, plaintiff was examined by a physician for the defendant and was approved for work, Exhibit "A". On October 15, 1980, the same medical examiner placed restrictions on plaintiff and the defendant refused to permit the plaintiff to work, Exhibit "B".

7. Admitted that the case in the United States District Court was dismissed with prejudice. It is denied that this dismissal is now enforceable because it was the result of a settlement reported to the United States District Court which was obtained either through the fraud of the defendant or as a result of a mutual mistake. This case was settled during the course of the trial because the defendant argued that the plaintiff was able to work. The plaintiff agreed to a settlement of $80,000, rejecting an offer of an additional $10,000 for a resignation, because by returning to work as defendant maintained he could, the plaintiff had an earning capacity of approximately $750,000 with this defendant. On October 2, 1980, plaintiff was examined by a physician for the defendant and was approved for work, Exhibit "A". On October 15, 1980, the same medical examiner placed restrictions on plaintiff and the defendant refused to permit the plaintiff to work, Exhibit "B".

8. Denied. This case is not barred by the release or by the doctrine of Res Judicata. The release was obtained

as a result of either the fraud of the defendant or as a result of a mutual mistake, and is an issue for the jury. The doctrine of Res Judicata is not applicable because this case was not tried to verdict, and the dismissal by the court was a result of the report of settlement, which as stated previously was a result of either the fraud of the defendant or as a result of a mutual mistake.

MEYER, LASCH, HANKIN & POUL

By: /s/ ALBERT M. HANKIN
Albert M. Hankin
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS

JOSEPH SMUKLER, being duly sworn according to law, deposes and says that he is of counsel for the plaintiff and that he makes this Affidavit in behalf of the plaintiff, being authorized so to do, and that the facts contained in the foregoing Reply to New Matter are true and correct to the best of his knowledge, information, and belief.

/s/ JOSEPH SMUKLER
Joseph Smukler

SWORN TO AND SUBSCRIBED
before me this 4th day
of August, 1981.

SAMANTHA NARELLE KIRKLAND
Notary Public

Samantha Narelle Kirkland
Notary Public, Phila., Phila. Co.
My Commission Expires Dec. 3, 1984

AUTHORIZATION FOR EXAMINATION OR TREATMENT

To be filled out by Personnel Manager:

Name _____ Medical Examiner _____

Position _____ Address _____

Social Security No. _____

Reason for Examination

- ☐ Pre-employment
- ☐ In-service
- ☐ Return to service
- ☐ Change of Position
- ☐ Treatment of Injury
- ☐ Other _____

Examination Required

- ☐ Physical
- ☐ Chest X-Ray
- ☐ Spine X-Ray
- ☐ Other _____
- ☐ Urinalysis
- ☐ Complete Blood Count
- ☐ Serology

Signature of Personnel Manager _____

Date _____

To be filled out by Medical Examiner:

I have personally examined Richard Dunn and have reviewed the results of the requested lab and X-ray procedures. I have determined that this person:

- ☑ does meet medical standards
- ☐ does not meet medical standards
- ☐ decision deferred to NRPC Medical Director for the following reasons: _____

Signature of Medical Examiner _____

Date 10-1-80

ORIGINAL COPY - RETURN TO REQUESTING OFFICER

NRPC—MED-1

Exhibit "A"

HEALTH SERVICE CORPORATION

PENN CENTER MEDICAL CLINIC
IVB BUILDING - 24 LOWER LOBBY
1700 MARKET STREET
PHILADELPHIA, PENNSYLVANIA 19103
215 564-2229 · 215 564-2230

RETURN TO WORK MEDICAL APPROVAL

WITH LIMITATIONS

Name: Richard Dunn

Company: Conrail

Date Examined: 10-14-80 Job: Trainman

An impartial Return To Work Medical Examination has been performed to determine if this person's physical capabilities, medical condition, mental abilities, and emotional make-up are suitable to perform all usual duties associated with the regular job without endangering the health and safety of the individual or of fellow employees.

Based upon the medical information provided by the individual and the treating health care provider, and the physical findings, the opinion of the Examiner is that this individual is able to safely perform any type of work associated with the regular job with the following limitations:
Pending Re-location of Release from Dr. Klingoffer.

- ☐ No lifting of objects over 50 lbs. No heavy physical exertion. Limited to Sedentary, Light, and Medium Work only.
- ☐ No lifting of objects over 50 lbs. No excessive bending, twisting, stooping, climbing. Limited to Sedentary, Light, and Medium Work only.
- ☑ No lifting of objects over 20 lbs. Minimal physical activity. No prolonged standing or walking. Minimum bending, stooping, squatting, twisting, reaching, and climbing. Limited to Sedentary and Light Work.
- ☐ No lifting of objects over 10 lbs. Occasional standing and walking. Sedentary Work only.
- ☐ Limited to work duties not requiring good vision.
- ☐ Limited to work duties not requiring color vision.
- ☐ Limited to work duties not requiring good hearing.
- ☐ Limited to work duties not requiring operation of motor vehicles or other moving equipment.

Date To Begin Work: _____

Signed: Della Fenner Schreiber, MD

Exhibit "B"